



# City of Morgan Hill

## City Council Staff Report

File #: 15-071, Agenda Date: 3/18/2015, Version: 1

### **CITY COUNCIL STAFF REPORT** **MEETING DATE: MARCH 18, 2015**

PREPARED AND APPROVED BY: Steve Tate, Mayor

### **CITY MANAGER AMENDED AND RESTATED EMPLOYMENT AGREEMENT AND HOME IMPROVEMENT HOUSING LOAN**

#### **RECOMMENDATION(S):**

1. Approve City Manager's Amended and Restated Employment Agreement;
2. Adopt resolution Approving a Home Improvement Housing Loan to the City Manager in the Amount of \$110,000 and Authorizing the Mayor to Sign all Necessary Loan Documents; and
3. Amend the FY 14/15 General Fund budget by \$110,000

#### **COUNCIL PRIORITIES SUPPORTED:**

##### **Ongoing Priorities**

Maintaining fiscal responsibility

Fostering a positive organizational culture

Preserving and cultivating public trust

#### **NARRATIVE:**

Steve Rymer assumed the role as Morgan Hill's City Manager on February 4, 2013. Annually, the City Council is required to evaluate the City Manager's performance. The primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and provide an opportunity for the City Manager to take affirmative action to address weaknesses and areas needing improvement. As part of this process, the City Council and City Manager review the existing City Manager Employment Agreement and agree upon any amendments to compensation or any other terms.

As a result of Mr. Rymer's successful second year as Morgan Hill's City Manager, I am recommending that the City Manager's Employment Agreement be amended and restated. A few key revisions include:

1. Effective February 1, 2015, the City Manager will receive a one and one-half percent (1.5%) merit increase to his base salary.
2. Provide a home improvement housing loan in the amount of \$110,000 that 1) ensures the City

realizes a higher rate of return than it receives through its current investments, 2) limits the City's financial risk, and 3) maintains public transparency.

- Rymer agrees to a recourse loan to limit the City's financial risk (which means Rymer will be personally responsible for the loan regardless of future home value)
- Loan amount of \$110,000 evidenced by promissory note and secured by deed of trust
- Five percent (5%) fixed interest rate
- Five year term with balance payable and due within 12 months of voluntary or involuntary separation from employment with City
- Rymer shall be responsible to pay all applicable taxes, insurance, and homeowner fees
- Rymer shall be responsible at his expense to maintain the property in good and habitable conditions at all times

Attached to this report is the promissory note with a five year payment schedule and budget scorecard.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

City Manager Performance Evaluation, City Council Closed Sessions, January 31, February 18, and March 4, 2015

**FISCAL AND RESOURCE IMPACT:**

The one and one-half percent compensation increase has an annual cost to the City of approximately \$3,200. General Fund reserves will be the source of funds for the housing loan and will realize annual revenue of approximately \$25,000 from Rymer's principal and interest payroll deduction payments. The recommended interest rate of 5% is approximately 2 ½ times greater than the City's current five year average rate of 2%.

**CEQA (California Environmental Quality Act):**

Not a Project

**LINKS/ATTACHMENTS:**

- 1) Resolution
- 2) Amended and Restated Employment Agreement
- 3) Promissory Note
- 4) Budget Scorecard

## RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDED AND RESTATED EMPLOYMENT AGREEMENT WITH THE CITY MANAGER, APPROVING A HOME IMPROVEMENT HOUSING LOAN TO THE CITY MANAGER IN AN AMOUNT NOT TO EXCEED \$110,000 AND AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE ALL NECESSARY LOAN DOCUMENTS, AND APPROVING RELATED AMENDMENTS TO THE CITY'S FISCAL YEAR 2014-15 ANNUAL BUDGET IN THE GENERAL FUND TO APPROPRIATE GENERAL FUND RESERVES FOR, AND REVENUES IN THE GENERAL FUND RESULTING FROM, SAID LOAN**

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into those certain agreements described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Mayor's Report entitled "City Manager Amended and Restated Employment Agreement and Home Improvement Housing Loan" submitted for City Council consideration at its meeting of March 18, 2015, submitted to the City Council by the Mayor (the "Report"), the contents of which Report are incorporated herein by this reference; and

WHEREAS, the City Council previously approved an Amended and Restated Employment Agreement for the City Manager, which Employment Agreement the City Council desires to further amend as described in more detail in the Report (and as set forth in Exhibit A attached hereto and incorporated herein) in order to provide for a housing loan for the City Manager (the "Amended Agreement"); and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2014-15, as set forth on Exhibit B to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the Amended Agreement with the City Manager substantially in the form attached hereto as Exhibit A and incorporated herein by this reference is hereby approved; and
- b. That a home improvement housing loan to the City Manager in accordance with and that meets the criteria and terms set forth in the Report is hereby approved and the Mayor is hereby delegated the authority to and is authorized and directed to negotiate and execute the terms of all necessary loan documents; provided, specifically, that the total amount of the principal of said housing loan shall in no event exceed One Hundred Ten Thousand Dollars (\$110,000.00); and
- c. That the City's previously adopted Fiscal Year 2014-15 Annual Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit B attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Assistant City Manager for Administrative Services, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2014-15 Annual Budget of City.

Section 3. This Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the of the City of Morgan Hill at a Regular Meeting held on the 18th day of March 2015 by the following vote:

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**DATE:**\_\_\_\_\_

\_\_\_\_\_  
**STEVE TATE, Mayor**

**∞ CERTIFICATION ∞**

**I, Irma Torrez, City Clerk of the City of Morgan Hill, California,** do hereby certify that the foregoing is a true and correct copy of Resolution No. XXXX, adopted by the City Council at the meeting held on      , 201\_.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Irma Torrez, CITY CLERK**

AMENDED AND RESTATED EMPLOYMENT AGREEMENT  
BETWEEN CITY OF MORGAN HILL  
AND  
STEPHEN RYMER

This Amended and Restated Employment Agreement between the City of Morgan Hill ("CITY") and Stephen Rymer ("RYMER") is hereby executed by and between the parties this 18<sup>th</sup> day of March 2015, with an effective date of February 4, 2015 (the "Effective Date").

RECITALS

- A. RYMER has been employed by CITY since April 17, 2006;
- B. RYMER has been appointed by CITY to serve as City Manager of Morgan Hill effective on February 4, 2013;
- C. RYMER will also serve as the Executive Director of the Successor Agency to the Morgan Hill Redevelopment Agency effective February 4, 2013; and
- D. At a duly noticed public meeting, the City Council approved that certain original Employment Agreement with RYMER on January 16, 2013; and
- E. At a duly noticed public meeting, the City Council approved this Amended and Restated Employment Agreement on May 21, 2014.
- F. At a duly noticed public meeting on July 2, 2014, the City Council revised Section 10 of this Amended and Restated Employment Agreement regarding the housing loan.
- G. At a duly noticed public meeting, the City Council approved this Amended and Restated Employment Agreement on March 18, 2015.

AGREEMENT

In consideration of the mutual promises set forth herein and for good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Parties: The parties to this agreement ("Agreement") are CITY and RYMER (hereinafter collectively ("the Parties")).
2. Purpose: The purpose of this Agreement is to provide the terms for the employment of RYMER as City Manager of CITY, as currently provided by Title 2, Chapter 2.08 of the Municipal Code of CITY.
3. Duties: CITY hereby agrees to employ RYMER to perform the functions and duties of City Manager for the CITY and as Executive Director of the Successor Agency to the Redevelopment Agency of CITY as specified in the Municipal Code of CITY, the Job Description (a copy of which is attached hereto and which is included herein by this reference), applicable state statutes pertaining to Successor Agencies, any and all other applicable CITY ordinances, resolutions or policies, and to perform such other legally permissible and proper duties and functions as the CITY shall from time to time assign. RYMER agrees that, to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or impliedly by the terms of this Agreement.

4. Agreement Provisions:

- 4.1 **Term:** This Agreement shall commence on the Effective Date and terminate on June 30, 2016 (the "Termination Date") unless either: (1) the term is modified hereafter by written agreement of the Parties, or (2) the Agreement renews automatically in accordance with the provisions of Section 4.3 herein. RYMER agrees to remain in the exclusive employ of the CITY during the term of the Agreement and neither to accept other employment nor become employed by another employer until the Termination Date, unless the term is modified as provided herein.
- 4.2 **Exclusivity:** The term "exclusive employ of the CITY" as used in section 4.1 above shall not be construed to preclude occasional teaching, writing, or military service performed by RYMER as long as it does not conflict with his primary responsibilities as City Manager and Executive Director as described in this Agreement. Also, CITY and RYMER recognize the value of participation in the City Manager's Department and other League of California Cities activities, and that speaking requests and teaching are valuable resources to the CITY. CITY may permit conflicting services to other entities upon prior approval of the City Council.
- 4.3 **Automatic Renewal:** At the conclusion of the term of this Agreement, it shall automatically renew each year, effective every July 1, unless terminated by the delivery of an Election of Non-Renewal by either party by no later than December 30 of the current term. Notice of an Election of Non-Renewal shall be conveyed by written notice to the other party.

5. Separation from Employment:

- 5.1 **Employment At-Will:** The City Council may, subject to provisions set out below, terminate the services of RYMER at any time, it being expressly understood and agreed between the parties that RYMER serves as an at-will employee of the City Council. CITY must provide RYMER with thirty (30) days written notice prior to separation from employment. For any period following an election of the Mayor or a member of the City Council, CITY may not give notice of separation from employment to RYMER until sixty (60) days after such election. The intent of the time period is to allow the new City Council to have adequate time to review the City Manager's performance.
- 5.2 **Severance Payment:**
  - 5.2.1 In the event of RYMER's separation from employment in accordance with Section 5.1 while RYMER is still willing and able to perform the duties of CITY Manager, where such termination is without cause, RYMER shall be entitled to receive compensation, consisting of a lump-sum payment of six (6) months of base salary and benefits ("Severance Payment");
  - 5.2.2 The Severance Payment shall include all benefits payable to or on behalf of RYMER with the exception of vacation not yet accrued as of the date of separation. Both salary and benefits shall be computed at the rates in effect as of the date of separation from employment;
  - 5.2.3 RYMER's acceptance of the Severance Payment shall release CITY from any further obligation under this Agreement, and also from any actual or alleged liability to RYMER that may be asserted in any claim of

any nature by RYMER against CITY based upon or arising from his employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, RYMER agrees to execute and deliver to CITY a release releasing CITY of all claims that RYMER may have against CITY. In return for such Severance Payment, RYMER further agrees to be available for consultation and assistance to the incoming acting, interim or permanent City Manager for a period of at least sixty (60) days.

5.2.4 RYMER shall **not** be entitled to the Severance Payment in the following events:

5.2.4.1 The Agreement expires and CITY elects not to renew this Agreement pursuant to Section 4.3, above;

5.2.4.2 RYMER is terminated because of his conviction of a felony or misdemeanor involving moral turpitude, or is convicted of any illegal act involving personal gain to himself; or

5.2.4.3 RYMER becomes incapable of discharging his responsibilities as described in this Agreement due to a permanent disability pursuant to Section 7 herein.

5.3 **Termination By RYMER:** RYMER may resign at any time from his position with CITY provided that he gives CITY sixty (60) days advance written notice. Should RYMER not provide CITY with sixty (60) days written notice, he shall not be entitled to cashout of any benefit other than as required by law.

6. Abuse of Office: If RYMER is convicted of a crime involving an abuse of his office or position, he shall fully reimburse the CITY for the following items of costs to the CITY:

6.1 Leave salary paid to RYMER by CITY pending an investigation of the crime of which he is convicted;

6.2 Any funds paid by CITY for the legal criminal defense of RYMER;

6.3 Any cash settlement paid to RYMER by CITY related to the termination of this Agreement;

6.4 Any payments by CITY to RYMER that were not agreed upon in this Agreement; and

6.5 For the purpose of this section the term "abuse of his office or position" means either:

a. an abuse of public authority including but not limited to waste, fraud, and violation of law under color of authority, or

b. a crime against public justice including, but not limited to, a crime described in Title 7 of Part 1 of the California Penal Code.

7. Disability: If, during the course of this Agreement, RYMER becomes permanently disabled or is otherwise unable to perform the full range of the essential functions of his position because of sickness, accident, injury, mental incapacity, or other health reason for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave, CITY shall have the option to terminate this Agreement pursuant to Section 5.1.

8. Compensation:

8.1 Effective the pay period beginning February 1, 2015, CITY agrees to pay RYMER, for his services rendered pursuant hereto, an annual salary of Two



Hundred Thirteen Thousand One Hundred Sixty-Two dollars (\$213,162) ("Base Salary") payable at the same time and in the same manner as other employees of the CITY are paid. Beginning July 1, 2014, and annually thereafter and except as otherwise provided in this Agreement, Rymer shall receive an annual cost of living adjustment ("COLA") in his base salary equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers, as calculated by the California Department of Industrial Relations for the 12 month period ending on the immediately preceding June 30. The City Council, in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to RYMER during the term of this Agreement;

- 8.2 CITY agrees to provide RYMER a Five Hundred dollar (\$500) per month vehicle allowance;
- 8.3 RYMER shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the CITY's Management Salary Resolution, as it is amended from time to time by City Council action; and
- 8.4 RYMER shall make periodic payments to CalPERS in an amount commensurate with CITY employees in the range of the "A" group of the CITY's Management Salary Resolution.
- 8.5 Beginning with CalPERS rates effective on July 1, 2014, RYMER agrees to pay fifty percent (50%) of future rate increases charged by CalPERS to CITY as an employer.

9. Performance Evaluation:

- 9.1 Annually, the City Council, in consultation with RYMER, shall define goals and performance objectives for the City Manager which they determine to be necessary for the proper operation of CITY; and
- 9.2 The City Council shall review and evaluate the performance of RYMER at least annually and shall meet with RYMER to discuss the evaluation between February and March of each year. Said review shall be in accordance with a process developed jointly by CITY and RYMER, which may be modified by mutual agreement. This evaluation shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law, or through some other mutually acceptable format. The parties agree that the primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and provide an opportunity for RYMER to take affirmative action to address weaknesses and areas needing improvement. RYMER shall be provided with a summary written statement of the findings of City Council, and he shall be provided with an opportunity to discuss his performance evaluation with City Council.

10. Housing Loan:

- 10.1 CITY agrees to loan RYMER a maximum of Nine Hundred Thousand Dollars (\$900,000) to purchase a residence and property ("Property") in Morgan Hill. Said loan proceeds shall be used to purchase Property within City limits which will be RYMER'S primary residence. Said loan shall be evidenced by a Promissory Note made by RYMER payable to the CITY and secured by a First Deed of Trust on the Property. The principal amount of the loan shall bear

interest at the 10 Year Treasury Rate plus one quarter percent (.25%) rounded to the nearest one-eighth percent (1/8%), amortized over a thirty (30) year period, and recalculated according to the same formula on the 10<sup>th</sup> and 20<sup>th</sup> anniversary dates of the loan. RYMER shall pay principal and interest for fifty percent (50%) of the loan amount and interest only for the remaining fifty percent (50%) of the loan amount. Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in 30 years. Payments on the loan shall be deferred until RYMER closes escrow on his current home or December 31, 2014, whichever is earlier. The rate may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. RYMER agrees to a recourse loan. Rymer shall be responsible to pay all applicable taxes, insurance, and homeowner fees and shall be responsible at his expense to maintain the property in good and habitable conditions at all times.

- 10.2 CITY agrees to loan RYMER One Hundred Ten Thousand Dollars (\$110,000) home improvement loan for his residence and property ("Property") in Morgan Hill. Said loan shall be evidenced by a Promissory Note made by RYMER payable to the CITY and secured by a Second Deed of Trust on the Property. The principal amount of the loan shall bear interest at five percent (5%). Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in five (5) years. Payments on the loan shall commence on April 17, 2015. The loan may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. RYMER agrees to a recourse loan.

11. Hours of Work, Administrative Leave:

- 11.1 It is recognized that RYMER must devote a great deal of time outside of normal working hours to the business of CITY. To that end, RYMER is granted total annual administrative leave of one hundred (100) hours per fiscal year, with a maximum aggregate accrual of five hundred (500) hours, above which maximum amount RYMER shall not earn or accrue additional administrative leave.
- 11.2 Administrative leave may be taken by RYMER at his discretion.
- 11.3 Effective January 1, 2015 and in combination with RYMER's annual vacation leave, RYMER may elect to cash out up to one hundred sixty (160) hours of the hours of administrative leave and vacation leave that will accrue to RYMER in the following calendar year only so long as RYMER irrevocably elects such cash out option prior to December 1 of each year for the following calendar year.
- 11.4 Upon RYMER's separation of employment from the CITY, RYMER shall be paid for all accrued, unused hours of administrative leave and vacation leave.

12. Deferred Compensation: Effective the pay period beginning February 2, 2014, RYMER shall be entitled to receive deferred compensation equal to the maximum annual contribution permitted under Section 457 of the Internal Revenue Code, such amounts to be credited to his account as deferred compensation.

13. Professional Development: The CITY agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of RYMER for professional development and official travel, meetings and occasions adequate to continue his professional development and to adequately pursue necessary official and other functions of CITY, including but not limited to the annual Conference of the League of California Cities ("LCC"), the LCC Spring City Manager's Department meeting, and annual ICMA Conference. Travel and conference expenses shall be reimbursed for reasonable expenses only and in accordance with the CITY's policies governing travel and conference expense reimbursement. The CITY further agrees to reimburse RYMER for tuition, fees, books, software and related educational expenses for professional development.
14. Non-Liability of Officials and Employees: No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
15. Bonding: CITY shall bear the full cost of any fidelity or other bonds required of RYMER under any law or ordinance.
16. Other Terms and Conditions of Employment:
  - 16.1 The City Council, in conjunction with RYMER, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of RYMER, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or applicable laws; and
  - 16.2 All provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they may now exist or hereafter may be amended, shall also apply to RYMER as they now do to other CITY employees in addition to said benefits enumerated specifically for the benefit of RYMER, except as herein provided.
17. No Reduction in Benefits: CITY shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to RYMER.
18. Notice: Notices pursuant to this Agreement shall be given by deposit in the custody of the U.S. Postal Service. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notices shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the U.S. Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.
  - 18.1 Notice to RYMER shall be sent to: 3455 Oakwood Court, Morgan Hill, CA 95037; and
  - 18.2 Notice to CITY shall be sent to: Mayor, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.
19. General Provisions:
  - 19.1 The text herein shall constitute the entire Agreement;

- 19.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of RYMER;
- 19.3 This Agreement is effective as of the Effective Date
- 19.4 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or enforceable, the remainder shall be deemed severable, shall not be deemed ineffective, and shall remain in full force and effect;
- 19.5 The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement;
- 19.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous Agreements oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and RYMER;
- 19.7 This Agreement shall be interpreted under the laws of the State of California; and
- 19.8 This Agreement shall be interpreted as though prepared by both parties.

IN WITNESS WHEREOF the Parties hereby agree to the foregoing by executing below:

CITY OF MORGAN HILL

STEPHEN RYMER

Date: \_\_\_\_\_

Date: 3/12/15

By: \_\_\_\_\_  
Steve Tate, Mayor

By: [Signature]  
Stephen Rymer

Attest: \_\_\_\_\_  
Irma Torrez, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_  
Renee Gurza City Attorney

Date: \_\_\_\_\_

Resolution No: \_\_\_\_\_

**SECURED PROMISSORY NOTE**

City Manager (Rymer)  
\$110,000.00

Morgan Hill, CA  
March 18, 2015

**1. BORROWER'S PROMISE TO PAY**

**FOR VALUE RECEIVED**, Stephen J. Rymer and Helene M. Rymer (collectively, "BORROWER") hereby jointly and severally promise to timely pay to the CITY OF MORGAN HILL, a municipal corporation ("CITY" or "NOTE HOLDER") in lawful money of the United States of America, the principal sum of One Hundred Ten Thousand Dollars (\$110,000.00) (the "PRINCIPAL"), together with interest on the outstanding PRINCIPAL amount, all in accordance with the terms and conditions set forth in this Secured Promissory Note ("NOTE").

The loan evidenced by this NOTE is a housing loan to BORROWER for the improvement of the BORROWER'S residence in the City of Morgan Hill, which loan is hereinafter referred to as the "LOAN." The obligations under this NOTE are secured by a certain Deed of Trust and Fixture Filing executed by BORROWER and CITY, as Trustor, in favor of that certain Lender identified in said Deed of Trust, as beneficiary (the "DEED OF TRUST") dated substantially concurrently herewith encumbering that certain real property more particularly described in said DEED OF TRUST (the "HOME").

**2. INTEREST RATE**

A. Outstanding PRINCIPAL under this NOTE shall bear interest at the simple interest rate of five percent (5%) per annum.

B. Upon the occurrence of an EVENT OF DEFAULT defined herein, the interest rate shall increase to the interest rate in effect as of the date of the EVENT OF DEFAULT plus three percent (3%). BORROWER SHOULD CONSULT WITH BORROWER'S OWN TAX ADVISOR(S) REGARDING ANY TAX EFFECTS ON BORROWER OF THE INTEREST RATE.

**3. MATURITY DATE; PAYMENTS**

A. Maturity Date.

All outstanding PRINCIPAL and accrued interest thereon shall become due and payable upon the earlier of the following events: (i) the date that is twelve (12) calendar months after the conclusion for any reason of Mr. Rymer's employment by CITY (including without limitation retirement); (ii) the date that is five (5) years from the date of this NOTE; (iii) the sale or transfer or further encumbrance of BORROWER's interest in the HOME; or (iv) BORROWER's failure to occupy the HOME as BORROWER's primary residence ("Maturity Date").

B. Payments.

1) BORROWER shall make payments of the LOAN in arrears, amortized over five (5) years, payable in bi-weekly installments commencing on April 17, 2015., and continuing thereafter

until the earlier of 4 years, 11 months after the date listed immediately above or paid in full.  
 Payments shall be sufficient to fully amortize PRINCIPAL and pay all interest accrued over five  
 (5) years.

- 3) Each payment made shall be applied first to outstanding PRINCIPAL due and then to the payment of interest accrued.
- 4) BORROWER's payments under this NOTE shall be automatically deducted from Mr. Rymer's bi-weekly payroll check from CITY for so long as Mr. Rymer is employed by CITY.
- 5) In instances where BORROWER and CITY first agree that payroll deduction is not available for a period of time, BORROWER shall make payments of the LOAN to CITY at the City Hall of Morgan Hill, presently located at 17575 Peak Avenue, Morgan Hill, CA 95037-4128, or such other address as CITY may notify BORROWER pursuant to the noticing provisions of this NOTE.
- 6) A schedule of payments to be paid to NOTE HOLDER under this NOTE is attached hereto as Exhibit A which Exhibit is incorporated herein by this reference.

#### **4. BORROWER'S RIGHT TO PREPAY**

A. Payments of all or any portion of the PRINCIPAL may be made by BORROWER at any time before they are due (a "Prepayment") without additional charge or penalty. BORROWER will notify the NOTE HOLDER in writing of any Prepayment, but may not designate a payment as a Prepayment if any payments then due under this NOTE are past due.

B. NOTE HOLDER will use Prepayments to reduce the amount of PRINCIPAL owed under this NOTE, and BORROWER may elect in writing at the time a Prepayment is made to re-amortize the LOAN over the then-remaining term of this NOTE. Unless BORROWER makes such election, there will be no changes in the due date or in the amount of the bi-weekly payment (unless NOTE HOLDER expressly agrees in writing to such changes).

#### **5. BORROWER'S FAILURE TO PAY AS REQUIRED**

A. Late Charge for Overdue Payments.

Subject to NOTE HOLDER's compliance with California Civil Code Section 2954.5, as amended or restated from time to time, if NOTE HOLDER has not received the full amount of any payment due under Section 3(B) within ten (10) calendar days after the date it is due, NOTE HOLDER may require BORROWER to pay a late charge to NOTE HOLDER. The amount of the charge will be five percent (5%) of the overdue payment of PRINCIPAL and interest, and the late charge must be paid within ten (10) days after written demand therefor.

B. Default.

If there is a failure to comply with the provisions of this NOTE or the DEED OF TRUST securing this NOTE, and such default is not cured within ten (10) days after written notice from NOTE HOLDER (an "Event of Default"), then NOTE HOLDER may demand that BORROWER pay all outstanding PRINCIPAL and accrued interest. Failure to pay accrued interest and outstanding PRINCIPAL on the Maturity Date shall also be an Event of Default. Upon the occurrence of an Event of Default, NOTE HOLDER may exercise its rights and remedies at law and in equity, including, without limitation, non-judicial foreclosure.



**C. No Waiver By NOTE HOLDER.**

Even if, at a time when there is an Event of Default, NOTE HOLDER does not require payment immediately in full as described above, NOTE HOLDER will still have the right to require a full payment at a later time.

**D. Payment of NOTE HOLDER's Costs and Expenses.**

If NOTE HOLDER has required payment immediately in full as described above, NOTE HOLDER will have the right to be paid by BORROWER for all of its costs and expenses in enforcing this NOTE to the extent not prohibited by applicable law (i.e., BORROWER shall be responsible for collection costs with respect to collection from BORROWER). Those expenses include, for example, attorneys' fees actually incurred by NOTE HOLDER in connection with enforcing this NOTE.

**6. GIVING OF NOTICES**

All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by first class certified mail, postage prepaid, return receipt requested, or sent overnight by a nationally recognized courier service such as Federal Express, addressed to the parties as follows:

<b>CITY:</b>	City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037-4128
<b>BORROWER:</b>	Mr. Stephen J. Rymer Most recent address on file in Mr. Rymer's personnel file Held by City of Morgan Hill, Administrative Services Dept.

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by certified mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

**7. SECURED RECOURSE LOAN**

Notwithstanding anything to the contrary in this NOTE, the DEED OF TRUST or any other document relating to the LOAN, NOTE HOLDER's recourse for repayment of the sums owed under this NOTE or under the DEED OF TRUST or any other document relating to the LOAN shall not be limited to the collateral described in the DEED OF TRUST, and BORROWER agrees that NOTE HOLDER may seek or obtain any appropriate relief or remedy, including a deficiency judgment against BORROWER.

**8. WAIVERS**

BORROWER and any other person who has obligations under this NOTE hereby waive the rights of “presentment” and “notice of dishonor”. “Presentment” means the right to require NOTE HOLDER to demand payment of amounts due. “Notice of dishonor” means the right to require NOTE HOLDER to give notice to other persons that amounts due have not been paid.

9. DUE ON TRANSFER OF INTEREST

The undersigned acknowledges the holding in Wellenkamp v. Bank of America (1978) 21 Cal. 3d 943. Notwithstanding that holding, the undersigned acknowledges that the LOAN evidenced by this NOTE is a special purpose loan in that it is specifically negotiated in connection with Mr. Rymer's position and employment as City Manager for CITY, that the payroll deduction provisions of his employment with NOTE HOLDER act as security to the benefit of the NOTE HOLDER, and that the general aspects of NOTE HOLDER's employment relationship with Mr. Rymer indicate that the LOAN is fashioned for and because of Mr. Rymer and, therefore, shall not be assumable and shall be due and payable as provided above.

BORROWER:

\_\_\_\_\_  
Stephen J. Rymer

Date: \_\_\_\_\_

\_\_\_\_\_  
Helene M. Rymer

Date: \_\_\_\_\_

CITY:

\_\_\_\_\_  
By: STEVE TATE, Mayor

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Renee A. Gurza  
City Attorney

Date: \_\_\_\_\_



# Loan Amortization Schedule

Enter values	
Loan amount	\$ 110,000.00
Annual interest rate	5.00 %
Loan period in years	5
Number of payments per year	12
Start date of loan	4/1/2015
Optional extra payments	\$ -

Lender name: Rymer

Loan summary	
Scheduled payment	\$ 2,075.84
Scheduled number of payments	60
Actual number of payments	60
Total early payments	-
Total interest	\$ 14,550.14

Pmt. No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	5/1/2015	\$ 110,000.00	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,617.50	\$ 458.33	\$ 108,382.50	\$ 458.33
2	6/1/2015	\$ 108,382.50	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,624.24	\$ 451.59	\$ 106,758.26	\$ 909.93
3	7/1/2015	\$ 106,758.26	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,631.01	\$ 444.83	\$ 105,127.25	\$ 1,354.75
4	8/1/2015	\$ 105,127.25	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,637.81	\$ 438.03	\$ 103,489.44	\$ 1,792.78
5	9/1/2015	\$ 103,489.44	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,644.63	\$ 431.21	\$ 101,844.81	\$ 2,223.99
6	10/1/2015	\$ 101,844.81	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,651.48	\$ 424.35	\$ 100,193.33	\$ 2,648.34
7	11/1/2015	\$ 100,193.33	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,658.36	\$ 417.47	\$ 98,534.97	\$ 3,065.81
8	12/1/2015	\$ 98,534.97	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,665.27	\$ 410.56	\$ 96,869.69	\$ 3,476.38
9	1/1/2016	\$ 96,869.69	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,672.21	\$ 403.62	\$ 95,197.48	\$ 3,880.00
10	2/1/2016	\$ 95,197.48	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,679.18	\$ 396.66	\$ 93,518.30	\$ 4,276.66
11	3/1/2016	\$ 93,518.30	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,686.18	\$ 389.66	\$ 91,832.12	\$ 4,666.32
12	4/1/2016	\$ 91,832.12	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,693.20	\$ 382.63	\$ 90,138.92	\$ 5,048.95
13	5/1/2016	\$ 90,138.92	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,700.26	\$ 375.58	\$ 88,438.67	\$ 5,424.53
14	6/1/2016	\$ 88,438.67	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,707.34	\$ 368.49	\$ 86,731.32	\$ 5,793.02
15	7/1/2016	\$ 86,731.32	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,714.46	\$ 361.38	\$ 85,016.87	\$ 6,154.40
16	8/1/2016	\$ 85,016.87	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,721.60	\$ 354.24	\$ 83,295.27	\$ 6,508.64
17	9/1/2016	\$ 83,295.27	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,728.77	\$ 347.06	\$ 81,566.50	\$ 6,855.70
18	10/1/2016	\$ 81,566.50	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,735.98	\$ 339.86	\$ 79,830.52	\$ 7,195.57
19	11/1/2016	\$ 79,830.52	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,743.21	\$ 332.63	\$ 78,087.31	\$ 7,528.19
20	12/1/2016	\$ 78,087.31	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,750.47	\$ 325.36	\$ 76,336.84	\$ 7,853.56
21	1/1/2017	\$ 76,336.84	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,757.77	\$ 318.07	\$ 74,579.08	\$ 8,171.63
22	2/1/2017	\$ 74,579.08	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,765.09	\$ 310.75	\$ 72,813.99	\$ 8,482.37
23	3/1/2017	\$ 72,813.99	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,772.44	\$ 303.39	\$ 71,041.54	\$ 8,785.76
24	4/1/2017	\$ 71,041.54	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,779.83	\$ 296.01	\$ 69,261.71	\$ 9,081.77
25	5/1/2017	\$ 69,261.71	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,787.25	\$ 288.59	\$ 67,474.47	\$ 9,370.36
26	6/1/2017	\$ 67,474.47	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,794.69	\$ 281.14	\$ 65,679.78	\$ 9,651.50
27	7/1/2017	\$ 65,679.78	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,802.17	\$ 273.67	\$ 63,877.61	\$ 9,925.17
28	8/1/2017	\$ 63,877.61	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,809.68	\$ 266.16	\$ 62,067.93	\$ 10,191.33
29	9/1/2017	\$ 62,067.93	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,817.22	\$ 258.62	\$ 60,250.71	\$ 10,449.94
30	10/1/2017	\$ 60,250.71	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,824.79	\$ 251.04	\$ 58,425.92	\$ 10,700.99
31	11/1/2017	\$ 58,425.92	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,832.39	\$ 243.44	\$ 56,593.52	\$ 10,944.43
32	12/1/2017	\$ 56,593.52	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,840.03	\$ 235.81	\$ 54,753.49	\$ 11,180.24
33	1/1/2018	\$ 54,753.49	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,847.70	\$ 228.14	\$ 52,905.80	\$ 11,408.38

Pmt. No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
34	2/1/2018	\$ 52,905.80	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,855.39	\$ 220.44	\$ 51,050.40	\$ 11,628.82
35	3/1/2018	\$ 51,050.40	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,863.13	\$ 212.71	\$ 49,187.28	\$ 11,841.53
36	4/1/2018	\$ 49,187.28	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,870.89	\$ 204.95	\$ 47,316.39	\$ 12,046.47
37	5/1/2018	\$ 47,316.39	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,878.68	\$ 197.15	\$ 45,437.70	\$ 12,243.62
38	6/1/2018	\$ 45,437.70	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,886.51	\$ 189.32	\$ 43,551.19	\$ 12,432.95
39	7/1/2018	\$ 43,551.19	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,894.37	\$ 181.46	\$ 41,656.82	\$ 12,614.41
40	8/1/2018	\$ 41,656.82	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,902.27	\$ 173.57	\$ 39,754.55	\$ 12,787.98
41	9/1/2018	\$ 39,754.55	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,910.19	\$ 165.64	\$ 37,844.36	\$ 12,953.63
42	10/1/2018	\$ 37,844.36	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,918.15	\$ 157.68	\$ 35,926.21	\$ 13,111.31
43	11/1/2018	\$ 35,926.21	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,926.14	\$ 149.69	\$ 34,000.07	\$ 13,261.00
44	12/1/2018	\$ 34,000.07	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,934.17	\$ 141.67	\$ 32,065.90	\$ 13,402.67
45	1/1/2019	\$ 32,065.90	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,942.23	\$ 133.61	\$ 30,123.67	\$ 13,536.28
46	2/1/2019	\$ 30,123.67	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,950.32	\$ 125.52	\$ 28,173.35	\$ 13,661.79
47	3/1/2019	\$ 28,173.35	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,958.45	\$ 117.39	\$ 26,214.90	\$ 13,779.18
48	4/1/2019	\$ 26,214.90	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,966.61	\$ 109.23	\$ 24,248.30	\$ 13,888.41
49	5/1/2019	\$ 24,248.30	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,974.80	\$ 101.03	\$ 22,273.50	\$ 13,989.45
50	6/1/2019	\$ 22,273.50	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,983.03	\$ 92.81	\$ 20,290.47	\$ 14,082.25
51	7/1/2019	\$ 20,290.47	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,991.29	\$ 84.54	\$ 18,299.17	\$ 14,166.80
52	8/1/2019	\$ 18,299.17	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 1,999.59	\$ 76.25	\$ 16,299.59	\$ 14,243.04
53	9/1/2019	\$ 16,299.59	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,007.92	\$ 67.91	\$ 14,291.67	\$ 14,310.96
54	10/1/2019	\$ 14,291.67	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,016.29	\$ 59.55	\$ 12,275.38	\$ 14,370.51
55	11/1/2019	\$ 12,275.38	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,024.69	\$ 51.15	\$ 10,250.69	\$ 14,421.65
56	12/1/2019	\$ 10,250.69	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,033.12	\$ 42.71	\$ 8,217.57	\$ 14,464.36
57	1/1/2020	\$ 8,217.57	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,041.60	\$ 34.24	\$ 6,175.97	\$ 14,498.60
58	2/1/2020	\$ 6,175.97	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,050.10	\$ 25.73	\$ 4,125.87	\$ 14,524.34
59	3/1/2020	\$ 4,125.87	\$ 2,075.84	\$ -	\$ 2,075.84	\$ 2,058.64	\$ 17.19	\$ 2,067.22	\$ 14,541.53
60	4/1/2020	\$ 2,067.22	\$ 2,075.84	\$ -	\$ 2,067.22	\$ 2,058.61	\$ 8.61	\$ -	\$ 14,550.14

AGENDA BUDGET SCORECARD  
FISCAL YEAR 2014-15  
ADJUSTMENT #

032

FUND:  
DEPARTMENT:  
OBJECT:

010 General Fund  
2105 City Manager-Housing  
86420 PROGRAM LOANS

AGENDA DATE:  
AGENDA ITEM TITLE:

03/18/15  
City Manager Amended and Restated Employment Agreement

	07/01/14 BEGINNING FUND BALANCE	ESTIMATED REVENUES	APPROPRI- ATIONS	06/30/15 ENDING FUND BALANCE
ORIGINAL BUDGET	11,647,113	31,979,197	32,596,872	11,029,438
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION		205,541	1,487,187	(1,281,646)
RECOMMENDED ACTION	-	-	110,000	(110,000)
RESULT OF RECOMMENDED ACTION	<u>11,647,113</u>	<u>32,184,738</u>	<u>34,194,059</u>	<u>9,637,792</u>

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